

COMPLIANCE BOARD OPINION NO. 00-7
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July 19, 2000

Ms. Irene Brown

The Open Meetings Compliance Board has considered your complaint that the Council of the Town of Mount Airy violated the Open Meetings Act by holding a closed meeting relating to sewer service to a certain properties. For the reasons stated below, the Compliance Board has concluded that the Act was not violated.

I

Complaint and Response

Your complaint alleged, based on information that you had learned from a council member, that the Mayor and Town Council held a closed session to discuss an agreement relating to sewer service to certain properties. As the Compliance Board understands the situation, sewer pipes to a property owned by a Mrs. Cunningham run through your property, and, in a 1989 agreement with the Town, Mrs. Cunningham accepted certain responsibilities related to the sewer service. Consequently, as you pointed out in your complaint, the discussion of this matter “directly affects our property and that of another resident.” Your complaint alleged that proper notice of this meeting was not provided, and the meeting was not open to the public, as it should have been.

In a timely response on behalf of Mount Airy, Richard C. Murray, Esquire, Town Attorney, confirmed that a meeting about sewer service to the Cunningham property was held, on April 10, 2000. Mr. Murray contended, however, that the meeting was not subject to the Open Meetings Act. Mr. Murray’s letter was accompanied by one from R. Delaine Hobbs, President of the Council, in which Mr. Hobbs also discussed the circumstances of the April 10 meeting.

According to Messrs. Murray and Hobbs, the longstanding practice in Mount Airy is for the Mayor to designate various council members as “department heads,” since the Town does not employ a Town Manager or other full-time administrator. Mr. Hobbs is responsible for the Water and Sewer Departments; other council members are responsible for other aspects of Town operations. In addition to Water and Sewer, according to the Town’s website (www.carr.lib.md.us/mtairy/gov.htm), these include Sanitation and Recycling, Planning and Zoning, Parks and Recreation, and Streets and Roads.

On April 10, 2000, at 9:40 p.m., following an open session of the Mayor and Council, Mr. Hobbs, “acting in my role as head of the Sewer Department,” asked to review the Cunningham matter “with the other Council Members/Department Heads and obtain their advice.” The meeting was also attended by the Mayor, the Town Attorney, and an employee of the Planning and Zoning office. The substance of the discussion concerned the 1989 agreement between the Cunninghams and the Town regarding the use of the single sewer line. Specifically, the issue was whether Mrs. Cunningham could assign her rights and obligations under this agreement in connection with the sale of her property, or whether, under the agreement, she was obliged to construct a new sewer line. According to Mr. Hobbs, “after a short discussion and advice from ... the Town Attorney that the agreement could be reassigned, I then asked the Council Members/Department Heads if they had objections to the agreement being reassigned. No objection was raised.” Mr. Hobbs then stated his views about the effect of the assignment, “which I expressed in connection with my responsibility as relating to the public sewer service of the Town.” The meeting ended after about 20 minutes.

II

Analysis

A. “Public Body”

The Open Meetings Act applies to a meeting only if a public body convenes a quorum to discuss a topic that is covered by the Act. The definition of “public body” specifically excludes “a local government’s counterpart to the Governor’s Cabinet, Executive Council, or any committee of the counterpart of the Executive Council.” §10-502(h)(3)(viii) of the State Government Article. In his response, Mr. Murray suggested that, when council members gather in their capacity as department heads, they are serving as Mount Airy’s “counterpart to the Governor’s Cabinet” and that, therefore, the April 10 meeting was not that of a “public body” subject to the Act.

We disagree. It is undisputed that the Town Council of Mount Airy is a public body. Its identity as such is not changed merely because each council member, by longstanding practice, assumes administrative responsibilities for an aspect of Town government. This situation is distinguishable from that discussed in a prior Compliance Board opinion, in which we held that a meeting of department heads with the County Commissioners of Frederick County was the equivalent of a meeting of the Governor’s Cabinet. Compliance Board Opinion 93-10, *reprinted in 1 Official Opinions of the Open Meetings Compliance Board* 50 (1993). There, the commissioners serve as the executive head of Frederick County’s government

and the department heads – different individuals – serve as their subordinates and advisors, just as Cabinet secretaries serve as subordinates and advisors to the Governor, the executive head of State government. In Mount Airy, by contrast, there is no separate group of departmental heads or advisors. When the council members meet as department heads, they are not the Cabinet; they are, rather, the Council itself, acting as executive head of Town government. Accordingly, the Compliance Board finds that the April 10 session was a meeting of a public body.

B. Executive Function Exclusion

The Compliance Board does agree with Mr. Murray’s alternative argument, however, that the April 10 meeting concerned an “executive function” that is excluded from the Act. With exceptions not relevant here, this exclusion renders the Act inapplicable to a public body’s discussion of matters that are not within any of the other defined functions set forth in the Act and that concern the administration or application of previously established law or policy. §10-502(d).

The Act’s definition of “quasi-legislative” function, to which the Act *does* apply, includes a discussion of “approving, disapproving, or amending a contract.” §10-502(j)(3). The term “contract,” in the Compliance Board’s view, is a broad one, encompassing any “agreement between two or more parties creating obligations that are enforceable or otherwise recognizable at law.” *Black’s Law Dictionary* 318 (7th ed. 1999). The 1989 agreement is a contract. Nevertheless, when the Council discussed the agreement, it was not engaged in the process of “approving, disapproving, or amending” it. Instead, it was construing the unamended language of an already approved agreement. Therefore, the Council was not engaged in a quasi-legislative function.

In discussing the situation regarding the assignment of the 1989 agreement, the council members were administering existing law, namely §91-14 of the Mount Airy Code, which deals with connections to the public sewer system. When the Council accepted the Town Attorney’s advice about the assignability of the agreement and Mr. Hobbs’ assessment of the sewer situation, the Council was applying existing law – deciding, in effect, that the assignment of the 1989 agreement was consistent with existing requirements regarding sewer connections. This is an executive function not covered by the Open Meetings Act. Hence, the April 10 meeting was not subject to the Act’s requirements regarding notice or access by the public.

III**Conclusion**

In summary, the Open Meetings Compliance Board finds that the Council of the Town of Mount Airy did not violate the Open Meetings Act in connection with a meeting on April 10, 2000, concerning an agreement related to sewer service to certain properties. The Compliance Board recognizes that the matter is of great concern to you, affecting as it does your own property. This opinion does not address any issues related to the substance of the 1989 sewer service agreement, its assignment, or the decision made at the April 10 meeting. These are all questions beyond the jurisdiction of the Compliance Board. Our jurisdiction and our opinion are limited to the Open Meetings Act itself, which we conclude was not applicable to the April 10 meeting.

OPEN MEETINGS COMPLIANCE BOARD

Walter Sondheim, Jr.
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